

DIRECTIVE NO. 1

CUSTOMS CLEARANCE OF IMPORTED HYDROCARBON OILS

Issued by the Agent of the Impôts on 10th February 2014

1. BACKGROUND

It is the responsibility of the Agent of the Impôts to collect, manage and account for all customs and excise duties, as well as GST due on the importation of hydrocarbon oils into the Island.

This Directive provides for a modern framework within which that responsibility can be discharged without imposing unreasonable, bureaucratic constraints upon the activities of persons engaged in the importation of such oils.

Whilst Agent's Directive No 3 sets out the overall framework of the modern electronic control via which shippers and importers can report, declare and pay for import duties that become liable, the Agent of the Impôts accepts that particular conditions apply to the importation of hydrocarbon oils and special arrangements are required to accommodate the collection of duties in this area.

This Directive therefore sets out the responsibilities of 'Approved Hydrocarbon Oil Importers', whereby traders who are granted such status can declare imported oils, pay duties that become liable and claim relief where applicable, in a fast and efficient manner. Whilst this simplified control regime involves minimal Customs intervention it is backed by strict record keeping requirements, imposed to enable Customs to apply post-import audit, backed by reference to a system of penalties which are applicable in circumstances where these rules are broken.

The requirements of Agent's Directive No 9 entitled 'Relief of Excise Duty on Hydrocarbon Oils' remains unaffected by these changes, save for the introduction of time periods for claiming relief specified at section 8.

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3. DEFINITIONS

"approved" means approved by Customs.

"Approved Premises" means premises approved by Customs under the rules of Directive No 5.

"Approved Trader" is a generic term which means a person or company approved by Customs to take possession of imported goods, including, in some cases, excise goods, in accordance with arrangements made with Customs.

"CAESAR" means Customs and Excise System for Administration of Revenue; that is to say the Customs goods control and revenue collection IT system as updated for GST purposes.

"clear days" when computing any period expressed in this Directive as a period of clear days, no account shall be taken of the day of the event from which the period is computed or of any Sunday or holiday.

"Customs" means the States of Jersey Customs and Immigration Service

"customs duty" means duty due on goods imported into the Customs Territory of the European Union, including Jersey, from third countries.

"Customs Law" means the Customs and Excise (Jersey) Law 1999

"duty" means any duty of customs and excise including GST.

"duty point" means the time at which excise duty liable on hydrocarbon oils imported into the Island becomes payable.

"excise duty" has the same meaning as under the Customs and Excise (Jersey) Law 1999

"excise goods" means goods liable to excise duty as specified at Schedule 1 Part 2 of the Customs and Excise (Jersey) Law 1999

"freight" means any goods imported into the Island where the carriage of the goods is undertaken for remuneration, or where the importation of the goods is for a commercial purpose.

"Fuel Consortium" means those companies who own, lease or administer the hydrocarbon oil importing and storage facilities at the Fuel Farm and shall also be taken to include those authorised distributors who draw fuel from those consortium facilities.

“Fuel Farm” means the tanker berth, hydrocarbon fuel storage tanks and ancillary premises at La Collette, St Helier.

“Gantry” means the drawing off points, equipped with flow metres, which measure the amount of fuel drawn off from the Fuel Farm storage tanks by members of the Fuel Consortium.

“GST” means Goods and Services Tax.

“GST Law” means the Goods and Services Tax (Jersey) Law 2007.

“GST Registered” means a person or company registered with the Income Tax Department for GST purposes.

“holiday” means Good Friday, Christmas Day and any day appointed as a public holiday or bank holiday under Article 2 of the Public Holidays and Bank Holidays (Jersey) Law 1951.

“Import Declaration” means Inward Entry in accordance with Article 25 of the Customs Law; whether by remote access to CAESAR or by other means of making declaration, approved by the Agent of the Impôts.

“Manifest Report” means the information required for Report to be made under Art 24 of the Customs Law (see section 6)

“oils” means ‘hydrocarbon oil’ as defined by the Customs and Excise (Jersey) Law 1999.

“Relief” means the requirement to pay duty is removed by law.

“Relief Order” means the Excise Duty (Relief and Drawback) (Jersey) Order 2000.

4. LEGAL BASIS

Article 67(2) of the GST Law states “..... the Agent of the Impôts shall provide for GST on the importation of goods to be charged and payable as customs duty on those goods, be responsible for the administration under the Customs and Excise (Jersey) Law 1999 of GST on the importation of goods”.

Article 24 (2) of the Customs Law allows the Agent of the Impôts to issue directions specifying the forms and procedure for making report required under that Article for Inward Entry (Manifest Report).

Article 24 (3) of the Customs Law requires the person making report (Manifest Report) to answer all such questions relating to the goods carried on the ship or aircraft and allows the Agents of the Impôts to require to be produced on demand any documents relating to the carriage of goods by any ship or aircraft.

Article 24 (4) of the Customs Law states that any goods which are required to be the subject of a Manifest Report, but which are not so reported, are liable to forfeiture

Article 25(1) of the Customs Law requires the proprietor or consignee of goods which are to be or have been unloaded from a ship or aircraft arriving in Jersey from a port or place outside Jersey to make entry of the goods in the manner specified in this Article within 3 clear days of the unloading of the goods.

Article 25(3) of the Customs Law allows the Agent of the Impôts to specify the form of goods entry (Inward Declaration) and information contained in it.

Article 25 (4) of the Customs Law allows the Agent of the Impôts to waive any of the requirements for the entry of imported goods required under that Article.

Article 25 (5) of the Customs Law allows the Agent of the Impôts, at any time within three years after the importation of goods, to require any person concerned with the importation to furnish any information relating to the goods and to produce any books or documents of whatever nature relating to the goods.

Article 17 (1) of the Customs Law states the Agent of the Impôts may give direction regarding the movement of goods under customs control.

Article 71 of the Customs Law allows the Agent of the Impôts to refuse to deal with agents or to require that agents show written authority from their principals.

5. MANIFEST REPORT

5.1 Treatment by CAESAR

In line with the requirements for Manifests Report set out in Agent's Directive No 3, manifests for vessels importing bulk loads of hydrocarbon oils shall be presented to Customs electronically via CAESAR.

Shipments of oils identified as being consigned to Approved Importers of Hydrocarbon Oils will be released at the point of arrival into the care of individual Approved Traders; under the terms of their specific undertakings with Customs these oils will subsequently be subject to Import Declaration and claims for relief or duty payment, as appropriate.

6. TREATMENT OF IMPORTED HYDROCARBON OILS

6.1 Treatment of La Collette bulk storage as 'Approved Premises'

In recognition of established practice, the Agent of the Impôts hereby agrees that for the purposes of the Customs control on imported oils, the bulk storage tanks operated by the Fuel Consortium at La Collette shall be treated as 'Approved Premises', wherein all imported hydrocarbon oils may continue to be stored prior to delivery into the Island, without payment of excise duty.

6.2 The 'duty point' for imported hydrocarbon oils

Imported hydrocarbon oils held in bulk storage tanks at La Collette Fuel Farm shall be securely stored without payment of excise duty, until such time as they are delivered into Jersey. The 'duty point' shall be when a company draws off oils through the flow meter on the Gantry for delivery

into the Island. Agent's Directive No 9 states that members of the Fuel Consortium drawing off oils must either:

- a) Declare it to duty, in accordance with arrangements made with the Agent of the Impôts, or
- b) Make the fuel subject to a claim for relief of duty, having ensured that the marking and colouring requirements of the Relief Order are met, or
- c) In the case of aviation spirit, undertake that the goods have been delivered directly for export.

7. APPROVED HYDROCARBON OIL IMPORTERS

7.1 Approved Trader status

Agent's Directive No 3 sets out simplified clearance procedures and methods of claiming relief available to Approved Traders who agree to make use of the electronic environment and settle accounts by direct bank transfer. This Directive extends those arrangements to the specialist area of the importation and delivery into the Island of hydrocarbon oils and enables businesses operating in this area to apply to become Approved Hydrocarbon Oil Importers.

As well as advantageous declaration and payment periods, outlined below, Approved Hydrocarbon Oil Importers will be authorised to claim relief of excise duty where the terms of Agent's Directive No 9 have been met.

8. IMPORT DECLARATIONS, EXCISE RELIEF CLAIMS AND PAYMENT PERIODS

8.1 Approved Hydrocarbon Oil Importers who are also GST Registered Businesses

The following rules apply to those oils (liable to both excise duty and GST) delivered into the Island by approved and registered businesses:

- Import Declaration must be made to Customs by remote on-line access to the Customs website within 30 days of the oils passing the gantry
- The excise duty liable must be paid on demand within this 30 day period
- Payment of excise duty shall be made electronically to Customs, preferably by BACS payment or as otherwise agreed with the Agent of the Impôts
- Claims for relief of excise duty shall be made by remote on-line access to the Customs website within 30 days of the oils passing the gantry, in accordance with Agent's Directive No 9
- The value of all oils imported must be accounted for to the Comptroller of Income Tax within the trader's quarterly return as required by the GST Law

8.2 Approved Hydrocarbon Oil Importers who are not GST Registered Businesses

The following rules apply to those oils (liable to both excise duty and GST) delivered into the Island from the gantry by approved traders which are not GST registered businesses:

- Import Declaration must be made to Customs by remote on-line access to the Customs website within 30 days of the oils passing the gantry
- The excise and GST duty liable must be paid on demand within this 30 day period
- Claims for relief of excise duty shall be made by remote on-line access to the Customs website within 30 days of the oils passing the gantry, in accordance with Agent's Directive No 9
- Payment of excise duty and GST shall be made electronically to Customs, preferably by BACS payment or as otherwise agreed with the Agent of the Impôts

8.3 Non-Approved Hydrocarbon Oil Importers who are GST Registered Businesses

The following rules apply to those oils (liable to both excise duty and GST) delivered into the Island from the gantry by non-approved businesses which are GST registered:

- Import Declaration must be made to Customs by remote on-line access to the Customs website within 3 (three) days of the oils passing the duty point
- The excise duty and import GST liable must be paid on demand within this 3 (three) day period
- Claims for relief of excise duty shall be made by remote on-line access to the Customs website within 3 (three) days of the oils passing the duty point, in accordance with Agent's Directive No 9

8.4 Non-Approved Hydrocarbon Oil Importers who are not GST Registered Businesses

The following rules apply to those oils (liable to both excise duty and GST) delivered into the Island from the gantry by non-approved businesses which are not GST registered:

- Import Declaration must be made to Customs by remote on-line access to the Customs website within 3 (three) days of the oils being imported or passing the duty point
- Claims for relief of excise duty shall be made by remote on-line access to the Customs website within 3 (three) days of the oils passing the gantry, in accordance with Agent's Directive No 9
- The excise duty and GST liability must be paid on demand within this 3 (three) day period.

8.5 Value of imported hydrocarbon oils for GST

The value of imported goods for the calculation of GST is set out in Art 32 of the GST Law which defines it as "the sum of the following:

- (a) the value of the goods determined under the Customs and Excise (Jersey) Law 1999 as if they were goods subject to a duty under that Law, whether or not the goods in question are in fact so subject;
- (b) so far as not already included under sub-paragraph (a), all taxes, duties and other charges levied on the goods either outside or, by reason of importation, within Jersey (except GST);

- (c) all costs by way of commission, packing, transport and insurance up to the port or place of importation”.

It additionally states that “for the avoidance of doubt, it is hereby declared that such taxes include any value-added tax, or goods-and-services tax, levied outside Jersey”.

9. RELIEF OF EXCISE DUTY ON HYDROCARBON OILS

The requirements of Agents Directive No 9, entitled ‘Relief of Excise Duty on Hydrocarbon Oils’ are unaffected by this Directive, save that section 8 specifies time periods within which claims for relief must be made.

Approved Hydrocarbon Oil Importers will be authorised to claim relief of excise duty and will be expected to do so on-line via the Customs website.

10. AUDIT OF IMPORT DECLARATIONS AND RELIEF CLAIMS

10.1 Requirements to maintain records

Approved Importers of Hydrocarbon Oils are obliged to maintain the following records for 3 years for Customs audit purposes;

- Metre readings showing the volume of oils drawn off each day via the gantry
- Records of any re-branding that may be required
- Bills of lading
- Original invoices
- Shipping charges
- Bank statements
- Customer accounts
- Journals
- Payment books
- Ledger records
- Delivery records

It should be noted, however, that the GST Law imposes a requirement to maintain records concerning GST for six years. Enquiries in relation to obligations under the GST Law should be referred to the Comptroller of Income Tax.

11. TREATMENT OF OTHER GOODS IMPORTED BY APPROVED HYDROCARBON OIL IMPORTERS

For confirmation, specific clearance arrangements agreed with Approved Hydrocarbon Oil Importers apply only to the treatment of oils on import and delivery into the Island. Other goods imported into the Island are outside of the scope of these arrangements. However, there is no reason why such businesses cannot also make application to become an ‘Approved General Importer’ thereby extending simplified arrangements to other imported goods consigned to their business. Agent’s Directive No 3 refers.

12. PENALTIES

12.1 Penalty tax

Schedule 7, paragraph 4 of the GST Law states:

- (1) If a penalty has been accepted under Article 65 of the Customs and Excise (Jersey) Law 1999 from a person in respect of any conduct, the person shall not be assessed to penalty tax under this Law in respect of the same conduct.
- (2) If a person has been assessed to penalty tax under this Law in respect of any conduct, a penalty shall not be accepted under Article 65 of the Customs and Excise (Jersey) Law 1999 from the person in respect of the same conduct.

12.2 Penalty amounts under the Customs Law

Under Article 65 of the Law the Agent of the Impôts may accept a sum by way of a penalty not exceeding three times the level of duty payable or the value of the goods, whichever is the greater instead of referring a matter with a view to prosecution.

12.3 Possible infractions under this Directive

The following table sets out the infractions that may arise from failing to abide by the terms of this Directive and the penalties that may be applicable as a consequence. The Schedule to the Criminal Justice (Standard Scale Of Fines) (Jersey) Law 1993 specifies a fine for level 4 on the Standard Scale to be £5,000 and level 2 on the Scale to be £500

| Failure | Infraction | Penalty |
|---|-----------------------|--|
| Release of goods under customs control without valid Customs authority | Art 17(4) Customs Law | Persons releasing the goods : Fine not exceeding level 2 on the standard scale and goods liable to forfeiture; Proprietor or consignee: Fine not exceeding level 2 on the standard scale and goods liable to forfeiture; or possible penalty amounts under Customs Law |
| Failure to provide documents relating to imported goods within a 3 year period of importation (in support of Import Declarations) | Art 25(6) Customs Law | Proprietor or consignee liable to fine of level 4 on standard scale; or possible penalty amounts under Customs Law |
| Failure to make Import Declarations within required time period deadline | Art 25(6) Customs Law | Proprietor or consignee liable to fine of level 4 on standard scale; and |

| | | |
|---|-----------------------------|---|
| | | Cancellation of Approved Trader status; or possible penalty amounts under Customs Law |
| Fraudulent evasion of duty; e.g. deliberate under declaration of value | Art 61(2)(a) Customs Law | Unlimited fine and / or 7 years imprisonment; and Goods liable to forfeiture |
| Fraudulent claim for relief of duty | Art 61(2)(a) Customs Law | Unlimited fine and / or 7 years imprisonment; and Goods liable to forfeiture |
| Approved Traders: Failure to pay GST accounts by deadline | Art 64(1) GST Law | Cancellation of Approved Trader status; |
| Approved Traders: Failure to pay excise or customs duty accounts by deadline | Breach of Agent's Directive | Cancellation of Approved Trader status; |

13. REVOCATION / RIGHT TO MAKE FUTURE AMENDMENTS

This Directive shall have effect from 10th February 2014.

The Agent of the Impôts reserves the right, unequivocally, to amend or withdraw, without prior notice, any rules and concessions contained in this Directive.

DAVID A.J. NURSE
Agent of the Impôts
10th February 2014